

AMENDED IN SENATE APRIL 17, 2006

SENATE BILL

No. 1558

Introduced by Senator Morrow

February 23, 2006

An act to ~~amend Section 15402 of the Government Code, and to add Chapter 1.5 (commencing with Section 1509.1) to Title 12 of Part 2 of the Penal Code, relating to death penalty appeals.~~ *add Section 1509 to the Penal Code, relating to habeas corpus.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1558, as amended, Morrow. ~~Death penalty appeals: appointment of counsel.~~ *Habeas corpus.*

Existing law provides for a writ of habeas corpus for various purposes, including to collaterally attack a judgment, as specified.

This bill would instead, for prisoners sentenced to death, provide for a motion for habeas corpus in order to collaterally attack a judgment. The bill would specify the time during which the motion may be made. The bill would require the Supreme Court and the Judicial Council to adopt rules in this regard in connection with conforming to specified federal provisions relating to habeas corpus procedures in capital cases.

~~Existing law provides for the employment and supervision of the attorneys of the State Public Defender, as specified. This bill would provide that the State Public Defender shall maintain no less than an unspecified number of funded positions, including an unspecified number of attorney positions.~~

~~Existing law establishes the procedures for the appointment of counsel in indigent criminal appeals when it is other than the State Public Defender.~~

~~This bill would provide that in noncapital cases the appointee must apply to the Supreme Court within an unspecified time of meeting competency standards, or in capital cases, to have been appointed by the Supreme Court.~~

~~This bill would further provide an expedited system of reviewing cases in which a death sentence is imposed. These provisions would be the only procedures for challenging a conviction that resulted in a sentence of death, except as specified.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1509 is added to the Penal Code, to
2 read:
3 1509. (a) (1) This section shall only apply to prisoners
4 sentenced to death.
5 (2) A prisoner in custody who claims that the judgment is
6 subject to collateral attack on any ground that was cognizable in
7 habeas corpus prior to enactment of this section may move the
8 court that imposed the sentence to vacate, set aside, or correct
9 the sentence.
10 (b) After the entry of judgment in the trial court, the court
11 shall offer counsel to the prisoner as provided in Section 68662
12 of the Government Code. Counsel appointed shall meet the
13 qualifications established by rule for counsel in capital habeas
14 cases, unless different qualifications are established by rule of
15 court specifically for counsel appointed under this section,
16 provided that prosecution and defense experience shall be
17 considered equally for the purpose of qualification.
18 (c) Either party may appeal the decision of the court on the
19 motion to the court that had jurisdiction of the appeal from the
20 judgment.
21 (d) Except as provided in subdivision (e), the initial motion
22 shall be filed with the trial court within one year of the order
23 entered under subdivision (b), or within one year of completion
24 of the record for appeal, whichever is later.
25 (e) An initial motion that is untimely under subdivision (d) or
26 a successive motion whenever filed shall be dismissed unless the
27 court finds, by the preponderance of all available evidence,

1 *whether or not admissible at trial, that the defendant is actually*
2 *innocent of the crime of which he or she was convicted. A claim*
3 *based on voluntary intoxication, a claim based on mental disease*
4 *or defect, or a claim that goes only to sentence is not a claim of*
5 *innocence for this purpose.*

6 *(f) An application for writ of habeas corpus shall not be*
7 *considered on the basis of any claim that was or could have been*
8 *considered under this section.*

9 *(g) It is the policy of the State of California to qualify for*
10 *Chapter 154 of Title 28 of the United States Code. The Supreme*
11 *Court and the Judicial Council shall adopt rules as necessary to*
12 *achieve and maintain qualification under that chapter.*

13 *(h) This section shall apply to all cases where judgment is*
14 *entered after the effective date of this section and all cases where*
15 *judgment was entered earlier but no application for habeas*
16 *corpus has been filed by the effective date. If a habeas petition is*
17 *pending on the effective date of this section, the court may*
18 *convert it to a motion under this section and transfer it to the*
19 *court that imposed the sentence.*

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22 **All matter omitted in this version of the bill**
23 **appears in the bill as introduced in**
24 **Senate, February 23, 2006 (JR11)**
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